

REQUEST FOR APPROVAL

To: Howard Levenson, Deputy Director
Materials Management and Local Assistance Division

From: Cara Morgan, Branch Chief
Local Assistance and Market Development

Request Date: March 28, 2017

Decision Subject: Approval Of 2012-2015 Jurisdiction Review Findings For The Source Reduction And Recycling Element, Household Hazardous Waste Element, And Mandatory Commercial Recycling Program For: Fresno County: Mendota; Lake County: Lake Unincorporated; Los Angeles County: San Gabriel; Mariposa County: Mariposa Unincorporated; Mendocino County: Point Arena, Willits; Nevada County: Nevada Unincorporated; Orange County: Garden Grove; Plumas County: Portola; San Benito County: San Benito County Integrated Waste Management Regional Agency; San Mateo County: Daly City; Santa Clara County: Morgan Hill; Sierra County: Sierra County Regional Agency; Siskiyou County: Siskiyou County Integrated Solid Waste Management Regional Agency

Action By: April 18, 2017

Summary of Request:

Public Resources Code (PRC) Section 41825 requires CalRecycle to review each City, County and Regional Agency SRRE and HHWE at least once every four years, and in some cases once every two years. Additionally, PRC Section 42649 requires CalRecycle to review each jurisdiction's implementation of Mandatory Commercial Recycling (MCR). This Request for Approval consists of 14 jurisdictions not meeting AB 939's 50% percent diversion requirement but which have made all reasonable and feasible efforts to implement effective SRRE and HHWE programs in the 2012-2015 and two year 14-15 Review Cycle. Additionally, this is the first formal review for these jurisdictions for implementation of MCR pursuant to PRC Section 42649. Each of these jurisdictions has been reviewed and found to be adequately implementing the requirements of PRC Section 42649. Subsequent to approval of this request, staff will continue (as mandated in SB 1016) to visit each jurisdiction annually to ensure the programs are being fully implemented and to ensure there are not gaps in the programs. Staff will also provide assistance, as needed.

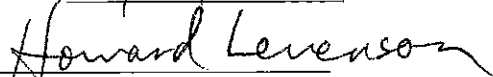
Recommendation:

While these jurisdictions have not met the AB 939 diversion requirements, staff has found that they have made all reasonable and feasible efforts to implement the SRRE, as well as the HHWE and MCR programs as required by PRC Sections 41780, 41825 and 42649, respectively.

Deputy Director Action:

On the basis of the information and analysis in this Request for Action and the findings set out above, I hereby find, that while the 14 jurisdictions listed in the title above have not met the 50 percent equivalent per-capita disposal requirement, they have made all reasonable and feasible efforts to implement the SRRE, the HHWE and have met the requirements of the MCR law.

Dated: 4/24/17


Howard Levenson, Deputy Director
Materials Management and Local Assistance

Attachments: The attachments to this Request for Approval contain summaries of the results and information used in each Jurisdiction's evaluation.

- 1a-n. Staff Jurisdiction Analysis Summary -- describes the programs implemented for each Jurisdiction.
- 2a. Jurisdiction Disposal Rate Trend -- provides a summary of each jurisdiction's 50% equivalent per capita disposal target and annual per capita rate.
- 2b. Diversion Programs Implementation Summary-- contains a SRRE and HHWE diversion program listing for each jurisdiction.
- 3. Transformation Diversion Claims

Background Information

Over the past few years, the Legislature and Governor have set ambitious goals to increase recycling and reduce solid waste disposal, in part driven by associated greenhouse gas emission reductions. In particular, Assembly Bill 341 set a new goal of reducing landfill disposal by 75 percent by 2020 and established MCR requirements. The purpose of MCR is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California. PRC Section 42649 requires that on and after July 1, 2012, each jurisdiction shall implement a commercial solid waste recycling program appropriate for that jurisdiction designed to divert commercial solid waste from businesses subject to PRC Section 42649.2, whether or not the jurisdiction has met the requirements of PRC Section 41780. Each jurisdiction is also required to report the progress achieved in implementing the MCR law, including education and outreach, identification, monitoring, and if applicable, enforcement efforts, by providing updates in the annual report required by PRC Section 42649.

PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program in accordance with the MCR law (See PRC Section 42649.3(i)).

Pursuant to PRC section 42649.3 (g), the Department is to evaluate a jurisdiction's compliance with the MCR law as part of the Jurisdiction Review required by PRC section 41825. The Department may also evaluate whether a jurisdiction is in compliance at any time the Department receives information the jurisdiction has not implemented, or is not making a good faith effort to implement its commercial recycling program (See PRC section 42649.3(h)).

In determining compliance with this requirement, the Department's evaluation may include, but is not limited to, the following factors:

- The extent to which businesses have implemented recycling programs;
- The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses;
- The extent to which the jurisdiction is conducting education and outreach to businesses; and
- The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance.
- The availability of markets for collected recyclables.
- Budgetary constraints.
- In the case of rural jurisdictions, the effects of small geographic size, low population density, or distance to markets.

Additionally, these jurisdictions were reviewed for compliance with their AB 939 requirements pursuant to PRC Section 42649.

As a result of its review, CalRecycle may find that a jurisdiction:

- 1) has adequately implemented its diversion programs and has achieved the 50percent equivalent per-capita disposal requirement; t;
- 2) has not achieved the 50 percent equivalent per-capita disposal requirement, but has made all reasonable and feasible efforts to implement diversion programs; or,
- 3) has failed to adequately implement its SRRE, and/or HHWE and/or is not complying with the MCR law and the process should commence to consider whether issuance of a compliance order would be appropriate. Jurisdictions that fail to satisfy the conditions of a compliance order may be subject to a fine of up to \$10,000 per day.

Staff's analysis of program implementation is based upon the Countywide Integrated Waste Management Plan Enforcement Policy Part II, originally adopted (by CalRecycle's predecessor, the California Integrated Waste Management Board) in August 2001 and revised in June 2015 pursuant to AB 341, AB 1826 and AB 1594. Staff utilizes the criteria delineated in the Enforcement Policy to determine the extent to which a jurisdiction has implemented, or has shown a good faith effort to implement, its selected SRRE, HHWE and MCR programs. The scenarios in the Enforcement Policy Part II provide illustrative criteria to serve as examples of the issues staff utilizes in examining local jurisdiction program implementation.

CalRecycle's Local Assistance and Market Development (LAMD) staff extensively reviewed each jurisdiction in this review cycle by conducting on-site visits to verify program implementation of its SRRE, HHWE and MCR programs. Analysis work included reviewing

documentation such as annual reports, hauler data, outreach and education materials, etc. This analysis determines the extent to which a jurisdiction has tried to meet the diversion requirements through its selected diversion programs, as well as implement the MCR requirements. Based upon this comprehensive analysis, staff then proposes one of the three findings listed above. If the LAMD staff recommends a finding that a jurisdiction is not implementing its SRRE and/or HHWE programs and has not complied with the MCR law, then that jurisdiction is referred to CalRecycle's Jurisdiction Compliance Unit (JCU) for a second independent evaluation. If warranted, the JCU staff then submits a separate Request for Approval recommending that the jurisdiction be placed on a compliance order.

Findings

Based on comprehensive analysis of the fourteen (14) jurisdictions that are the subject of this Request for Approval, LAMD Branch staff finds that these jurisdictions are in compliance with PRC Section 41780, 41825 and 42649.

Please refer to Attachment 1a-n for details about each jurisdiction's diversion programs analyses.